IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/06/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE N.KANNADASAN

H.C.P.No.693 of 2004

Perumal .. Petitioner

-Vs-

1. The Superintendent of Police
Kancheepuram District.

2. The Inspector of Police
Thirukalukundram Police Station.

3. Sorajammal

4. Elangovan .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus to direct the respondents to produce the petitioner's wife, Mrs.Soundari and to set her at liberty.

For Petitioner : No appearance

For Respondents : ---

:ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

There is no representation on behalf of the petitioner either in person or through his counsel when the matter was taken up this morning and hence, the matter was adjourned to 2.15 p.m. Even now there is no representation on behalf of the petitioner.
2. According to the petitioner, he married one Soundari in the year 1994, but at the ill-advise of the respondents 3 and 4, his wife refused to live with him and sought for maintenance. As a result, the petitioner filed O.P.No.1403 of 2001 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 and the learned Principal Judge, Family Court, Madras allowed the petition by order dated 30.7.2002.

3. Complaining that, in spite of the said order dated 30.7.2002 made in O.P.No.1403 of 2001, the petitioner is not permitted by the respondents 3 and 4 to meet his wife, the petitioner seeks a direction to the respondents to produce the body of the petitioner's wife Mrs. Soundari and to set her at liberty.

4. Exigence of the writ at the instance of a husband is very rare in English Law, and in India the writ of habeas corpus is probably never used by a husband to regain his wife and the alternative remedy under Section 100 of the Code of Criminal Procedure is always used. Then there is the remedy of a Civil suit for restitution of conjugal rights. Husbands take recourse to the latter when the detention does not amount to an offence and to the former if it does. In both these remedies all the issues of fact can be tried and the writ of habeas corpus is probably not demanded in similar cases if issues of

fact have first to be established. This is because the writ of habeas corpus is festinum remedium and the power can only be exercised in a clear case, vide Mohd. Ikram Hussain v. State of U.P., (1964) 5 SCR 86.

5. From the averments made by petitioner in the affidavit filed in support of this petition, it is clear that his wife, Mrs.Soundari is not willing to join with him and only that necessitated the petitioner to file a petition for restitution of conjugal rights. That apart, the averments made by the petitioner that his wife, Mrs.Soundari also claimed maintenance on the petitioner would, in turn, show that she was either not happy in the company of the petitioner or was neglected by the petitioner. It is, therefore, obvious that the refusal of the wife to join the petitioner is not under the influence of any third party, as she had not chosen to join despite the order for restitution of conjugal rights. Hence, in my considered opinion, the question of illegal custody of the petitioner's wife, Mrs.Soundari by the respondents 3 and 4, as complained by the petitioner does not arise. This petition for a writ of habeas corpus for her production and release must therefore fail.

For the reasons aforesaid, this writ petition is dismissed.

Index: Yes
Internet:Yes

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To:

1. The Superintendent of Police
Kancheepuram District.

2. The Inspector of Police
Thirukalukundram Police Station.

3. The Public Prosecutor

High Court, Madras.